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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  A.B., by his mother B.B., *et al.*,

12                  Plaintiffs,

13                  v.

14                  BREMERTON SCHOOL DISTRICT NO.  
15                  100-C, a municipal corporation, *et al.*,

16                  Defendants.

Case No. C07-5682FDB

ORDER GRANTING BREMERTON  
SCHOOL DISTRICT'S MOTION TO  
DISMISS

16                  Plaintiffs are school age residents of the Frances Haddon Morgan Center (Morgan Center), a  
17                  Residential Habilitation Center for individuals with developmental disabilities operated by the  
18                  Department of Social and Health Services' (DSHS) Division of Developmental Disabilities. Plaintiffs  
19                  had attended a classroom in the Bremerton School District's junior high building, which space was  
20                  leased by the DSHS through the Morgan Center. Owing to problems with the building, and  
21                  concluding, based on a study that investment required to bring the building up to health and safety  
22                  standards was not worth it, the Bremerton School District's Board of Directors decided to close the  
23                  junior high building as of January 2008, and so informed the Morgan Center in February 2007 that  
24                  the building would be closing in December 2007. The School District offered to assist the Center in  
25                  locating another facility on or close to District Property. Meanwhile, the Morgan Center moved the

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1 displaced students to a classroom on the Morgan Center campus. As part of their request for  
2 injunctive relief, Plaintiffs sought to prevent the Defendants from closing the junior high school  
3 building. Injunctive relief was denied, as neither the DSHS nor the Superintendent should be ordered  
4 to countermand a decision of the Bremerton School District's School Board, and, furthermore, the  
5 closure decision was reasonable under the circumstances.

6 The Bremerton School District moves for dismissal or for a more definite statement. Having  
7 considered the parties' memoranda, the record herein, and being fully informed, for the following  
8 reasons, the motion must be granted. Under the Individuals with Disabilities Education Act (IDEA),  
9 in exchange for federal funds, states agree to ensure that a free appropriate public education is  
10 provided to all children with disabilities residing in the state. 20 U.S.C. § 1412. "The statute,  
11 regulations, and legislative history all make clear that the state educational agency, ... has the  
12 ultimate responsibility for assuring that all handicapped children have the right to a free appropriate  
13 public education." *Kerr Center Parents Ass'n v. Charles*, 897 F.2d 1463 (9<sup>th</sup> Cir. 1990).  
14 Washington State has adopted laws to meet its obligation under IDEA. For "residential school  
15 residents" – such as the Plaintiffs – RCW 28A.190.030 provides the scope of duties and authority of  
16 the school district: generally, that it provide educational services (*e.g.*, teachers, textbooks,  
17 curriculum, etc.) The duties and authority of the DSHS as to residential school residents is set forth  
18 in 28A.190.040: DSHS, in support of the education program provided by a school district, must  
19 provide facilities, *e.g.*, transportation to and from the education site, a safe and healthy building and  
20 playground space, furniture, heat, lights, etc., and "such other support services and facilities as are  
21 reasonably necessary for the conduct of the program of education. 28A.190.050 provides for the  
22 negotiation and execution of written contracts between the school districts and DSHS for provision  
23 of the above services.

24 Plaintiffs describe the School District's obligations under law, and contend that the School  
25 District could have moved other students around to make space. This argument, of course, ignores  
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1 DSHS's obligation to provide the building for the residential students' education. Plaintiffs appear to  
2 argue that in closing the junior high school, the School District ignored its duties to provide  
3 education in the general education environment with students who are nondisabled to the maximum  
4 extent appropriate. That argument fails under these circumstances, as former leased space is no  
5 longer available by a School Board decision for legitimate reasons, and DSHS has not found an  
6 alternate facility that it finds acceptable. The School District gave early notice to DSHS/Morgan  
7 Center of its decision to close the junior high school building, made some suggestions for alternatives  
8 to DSHS/Morgan Center, and offered its assistance in locating an alternative site. The School  
9 District has not breached its statutory obligations. DSHS has the obligation to provide a facility for  
10 education of the residential students at Morgan Center. Just because the School Board's decision  
11 regarding the junior high school building renders that space unavailable, does not shift the statutory  
12 obligation for provide a "safe and healthy building" from DSHS to the School District. Therefore,  
13 the School District's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a  
14 claim must be granted.

15 ACCORDINGLY, IT IS ORDERED: Defendant Bremerton School District's Motion to  
16 Dismiss [Dkt. # 20] pursuant to Fed. R. Civ. P. 12(b)(6) is GRANTED, and this cause of action is  
17 DISMISSED.

18 DATED this 15<sup>th</sup> day of January, 2008.

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21 FRANKLIN D. BURGESS  
22 UNITED STATES DISTRICT JUDGE  
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